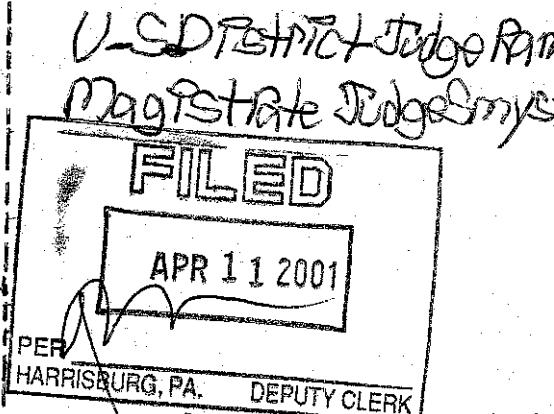


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(100) 4-1

JOHN RICHARD DAE,
Plaintiff,
vs. ORIGINAL
KENNETH D. HYLER, et al.,
Defendants.

CIVIL NO. 100-4-1



PLAINTIFF'S REPLY BRIEF TO DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER REQUIRING PRISON CHAPLAIN REKLADJEL VOGEL AND OFFICER CHARLIE CRAIG TO SIGN AFFIDAVITS FOR THE PLAINTIFF.

COMES now, the PLAINTIFF & his cause in the above-entitled Civil Action, John Richard Dae, a Layman Unlettered in the Arts & Sciences of the Law & legal Proceeding Within the United States & now files his Plaintiff's Reply Brief to Defendants' Brief in opposition to Plaintiff's Motion for An Order Requiring Prison Chaplain Rekladjel And Officer Charlie Craig to sign Affidavits for the Plaintiff herein, & who, avers, deposes & states:

On or About February 15, 2001, Plaintiff John Richard Dae filed his Motion for An Order Requiring the Chaplain Rekladjel and Officer Charlie Craig to sign Affidavits for the Plaintiff & herein And Brief in Support, herein this case.

On or About March 20, 2001, Defendants, by Counsel, filed their Brief In Opposition to Plaintiff's Motion for Order Requiring Prison Chaplain Rev. Vogel And Officer Charlotte Craig to Sign Affidavits for the Plaintiff, herein this case.

In the Br. In Opposition to Plaintiff's Motion for An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlotte Craig to Sign Affidavits for the Plaintiff, Defendants fail to respond and/or address facts and arguments which the Plaintiff raises therein his Motion for An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlotte Craig to Sign Affidavits For The Plaintiff. Herein And Br. In Su-

Instead they only argue, that "Fed. R.Civ.R. 56(d) allows for the filing of affidavits to oppose a motion for summary judgment. Nowhere, however, do the federal rules provide for the court to order parties or parties to sign affidavits, which they are willing to sign voluntarily. Plaintiff's motion, therefore, be denied. - - - - - The rule contemplate this Court compelling answers to questions posed to persons as part of discovery, do not authorize this Court to compel the signing of affidavits. Plaintiff's motion should be denied."

and, therefore, pursuant to Fed. R.Civ.R. 8(d), Defendants, by law, be deemed & held to have admitted the facts & arguments.

1 / See Defendants' Br. In Opposition To Plaintiff's Motion

For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlotte Craig to Sign Affidavits For The Plaintiff.

this Plaintiff's Motion For An Order Requiring Prison Chaplain Vogel And Officer Charlie Cray to Sign Affidavits For The Plaintiff Herein And Brief In Support, herein this case.

In their Brief In Opposition, Defendants claim,

Following the close of discovery, the defendants moved for summary judgment, and subsequently submitted a brief and documents in support of the motion.

However, in reply to the above, the Plaintiff avers submits, that, such is untrue and Defendants lie when they claim such, as discovery did not close before this case until January 17, 2000. Defendants filed their Motion for Summary Judgment on October 17, 2000 & their Brief supporting documents on December 5, 2000, hence this.

Defendants next claim & argue, that

Federal Rule 56 allows for the filing of affidavits to oppose a motion for summary judgment. Nowhere, however, do the federal rules provide for the court to order parties or non-parties to sign

2/See Defendants' Brief In Opposition to Plaintiff's Motion For An Order Requiring

Prison Chaplain Rev. Vogel And Officer Charlie Cray to Sign Affidavits For The Plaintiff.

affidavits, which they are not willing to sign voluntarily. Plaintiff's motion must, therefore, be denied.^{3/}

However, in reply to such, the Plaintiff avers ~~that~~ that, first of all, neither do the Federal rules prohibit a court ordering parties or non-parties to sign affidavits, which they are not willing to sign involuntarily. The Federal rules just do not either way, and, second of all, the Plaintiff never declaimed in his Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charles Craig To Sign Affidavits For The Plaintiff herein And B[re]f support, that, Rev. Vogel and Officer Craig were not willing to sign affidavits known for the Plaintiff at all, but what the Plaintiff stated & claimed therein his Motion And B[re]f support, was that, ^{1/} However, the Plaintiff bo & therefore, avers & submits, that neither Rev. nor Officer Craig will voluntarily sign an affidavit for the Plaintiff, herein, as they would both be concerned that they would get in trouble for such.^{2/} And, third of all, on Monday morning, March 26, 3/ See Defendants' brief in opposition to Plaintiff's Motion For An Order Requiring Prison Chaplain Rev. And Officer Charles Craig To Sign Affidavits For The Plaintiff.

2. 4/ See Plaintiff's Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charles Craig To Sign Affidavits For The Plaintiff herein And B[re]f To support, as

the Plaintiff spoke with Officer Martin, an Officer assigned to work the 6:00 AM-2:00 PM Shift herein in the State Correctional Institution, Greene Special Management Unit and guest asked him If he or any other correctional Officer and/or would voluntarily sign an Affidavit for an Inmate-Plaintiff in a Lawsuit in state or Federal Court, would they get in trouble for doing so and Officer Martin replied answered "yes."

Defendants also claim & argue that:

The rules contemplate this Court compelling answers to questions posed to persons as part of discovery. They do not authorize this Court to compel the signing of affidavits. Plaintiff's Motion should be denied.

However, in reply to the above, the Plaintiff avers ~~that~~ that, first of all, while the Rules may very well contemplate this Court compelling answers to questions posed to persons as part of discovery, there is nothing in the rules which does not authorize this Court to compel non-parties to sign affidavits as to S/See Defendants' BRIEF in Opposition to Plaintiff's Motion

Order Requiring Prison Chaplain Rev. Vogel and other Chaplains to sign affidavits for Plaintiff, et al.

Defendants erroneously & fraudulently claim & argue, In reality the federal rules neither state that this has or does not have such authority to compel the signing of affidavits, as the rules are silent and, second of all, by their Brief in opposition to Plaintiff's Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlene Craig To Sign Affidavits For The Plaintiff & their arguments therein such, the Defendants are illegally and unconstitutionally attempting to get Court to unlawfully deny this Plaintiff's relevant and necessary evidence/information which he in order to enable him to adequately, effectively, meaningfully respond to & address & combat Defendants Motion For Summary Judgment And Memorandum Of Law In Support, herein, and enable him to comply with & follow the requirements of Fed. R. Crim. P. 56(c) & (e) & the Defendants do this because they know that such affidavits of Rev. Chaplain Rev. Vogel And Officer Charlene Craig will further support & prove the allegations/facts of the Plaintiff's initial complaint & his argument against their Motion For Summary Judgment and that the Defendants and Ben Livingood "Re" in their Memorandum In Support of Motion For Summary Judgment 6/ Plaintiff avers that notably absent from Defendants' Brief in opposition to Plaintiff's Motion For An Order Requiring Prison Chaplain Vogel And Officer Charlene Craig To Sign Affidavits For The Plaintiff to any Federal Court Case Or hearing is no support in

In the Unsworn Declaration of Ben C. L. Wiggood, accompanying such, herein:

Plaintiff furthermore avers & submits, that, Rule 56(e) of the Federal Rules of Civil Procedure,

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

THIS PLAINTIFF IS ATTEMPTING TO COMPLY WITH & MEET THE REQUIREMENTS OF THE ABOVE-CITED RULE TO OBTAIN AFFIDAVITS SETTING FORTH SPECIFIC FACTS SHOWING THAT THERE IS A GENUINE ISSUE FOR TRIAL. IN THIS CASE, HOWEVER, THE DEFENDANTS ARE ILLEGALLY ATTEMPTING TO PREVENT THIS PLAINTIFF FROM DOING SO BY THEIR ARGUMENTS IN THEIR BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER REQUIRING CHAPLAIN REV. VOGEL AND OFFICER CHARLIE CRAIG TO SIGN AFFIDAVITS FOR PLAINTIFF, HEREIN. PLAINTIFF'S ARGUMENTS HEREIN, PLAINTIFF BELIEVES, THEREFORE, ARE AS SUBMITTED. THIS IS BECAUSE THERE IS NO CASE CITATION/FEDERAL COURT WITHIN THE SUPPORT OF WHICH, BECAUSE OF THE PHRASE "IF APPROPRIATE",

Furthermore, Rule 56(f) of the Federal Rules of Civil Procedure, states:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated in the affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or may direct that the party be allowed to depose or may make such other order as is just.

Plaintiff avers & submits, that, the key word here, "or may make such other order as is just", and of such, Plaintiff contends & submits, that the Court has the authority and the "duty" to grant, in full, the Plaintiff's Motion For An Order Requiring Prison Chaplain Rev. Vogel And Officer Charlie Oberg to sign affidavits for the Plaintiff, herein this cause, and that it would be an unfair & unjust pre-judgment manifest disregard of justice and an unconstitutional denial of due process of the law for this Court to deny this Motion, as such that such requested order, this Plaintiff will be unable to obtain such affidavits from Prison Chaplain Rev. Vogel And Officer Charlie Oberg & thus he will be unconstitutional & inequitably precluded from which he needs to enjoin from

able to combat and oppose the "lies" and dis-
materTal facts of Defendant's Motion for Summary
Judgment And Memorandum of Law In Support
herein this case, and to enable him to
set forth specific facts showing that there
is a genuine issue for trial, herein this case
and that without such affidavits he will be unable to

Even if this Court would hold that it does
not have the authority to compel/ order re-
-parties to sign the Affidavits for the
Plaintiff, this Court can & should then order
discovery reopened herein this case for
sole purpose of permitting this Plaintiff
to obtain the relevant and necessary
information from Prison Chaplain Rev.
And Officer Charlie Craig by a deposition
upon written questions under Fed. R. Crim. P.
or Interrogatories under Fed. R. Crim. P. 33 -

Based upon the above foregoing facts
arguments, Plaintiff's Motion for An Order Requiring
Prison Chaplain Rev. Vogel And Officer Charlie Craig
to sign affidavits for the Plaintiff should not
be denied, but should be granted in full forthwith. RESPECTFULLY

(s) *John Richard*
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Dated: 4th APRIL 2001 =